

**United States Court of Appeals
for the Federal Circuit**

APPLIED PREDICTIVE TECHNOLOGIES, INC.,
Plaintiff-Appellant

v.

MARKETDIAL, INC., JOHN M. STODDARD, aka Johnny
Stoddard, MORGAN DAVIS,
Defendants-Appellees

Appeal from the United States District Court
for the District of Utah, Case No. 2:19-cv-00496-JNP-CMR
Honorable Jill N. Parrish

**APPELLEES' OPPOSITION TO MOTION FOR LEAVE TO
EXCEED CONFIDENTIAL WORD LIMIT**

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FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2024-1751; ~~2024-1805 (consolidated)~~
Short Case Caption Applied Predictive Technologies, Inc. v. MarketDial, Inc.
Filing Party/Entity MarketDial, Inc.; John M. Stoddard; Morgan Davis

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 05/13/2024

Signature: 

Name: Keith A. Call

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input checked="" type="checkbox"/> None/Not Applicable
MarketDial, Inc.		
John M. Stoddard		
Morgan Davis		

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
March 2023

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable☐ Additional pages attached

Allan E. Anderson with Arent Fox Schiff	Jeff Leung with Arent Fox Schiff	Dana Finberg with Arent Fox Schiff, O'Hagan Meyer
Korey Rasmussen with Spencer Fane LLP	Lashel Shaw with Snow, Christensen & Martineau	Gregory Osbourne with MarketDial, Inc.
Andrew Ong with Goodwin Procter LLP	Neel Chatterjee with Goodwin Procter LLP	Samuel Sherry with Goodwin Procter LLP

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☒ Yes (file separate notice; see below) ☐ No ☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable☐ Additional pages attached

STATEMENT OF LIMITED CONSENT AND OPPOSITION - RELIEF SOUGHT

Appellees MarketDial, Inc., John M. Stoddard, and Morgan Davis (collectively, “MarketDial”) consent in part and oppose in part Applied Predictive Technologies, Inc.’s (“APT”) November 4, 2024 Motion for Leave to Exceed Confidential Word Limit (“Motion”), as follows:

1. MarketDial agrees that the identity of the parties’ clients should remain confidential. Such client identities are often the subject of confidentiality agreements with the clients. MarketDial has no objection to maintaining the confidentiality of those client identities.
2. MarketDial opposes all other relief in APT’s motion and recommends that the ultimate determination of whether the information should remain redacted be left to the merits panel. APT’s request to protect from public disclosure its alleged “confidential” word designations, other than client identities, is unjustified.

ARGUMENT

“There is a strong presumption in favor of a common law right of public access to court proceedings.” *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1356 (Fed. Cir. 2011) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597-99 (1978)). “The party seeking protection bears the burden of demonstrating that there is good cause for restricting the disclosure of the information at issue.” *Id.* at 1357 (citations omitted). A court cannot abdicate its responsibility to determine whether filings should be made available to the public “simply because the parties agree to [a] protective order.” *Id.* at 1358. Public access promotes the integrity, transparency, and legitimacy of courts and the judicial process. *DePuy Synthes Products, Inc. v. Veterinary Orthopedic Implants, Inc.*, 990 F.3d 1364, 1369 (Fed. Cir. 2021).

Here, the “confidential” words in APT’s reply brief—other than client identities—do not withstand facial scrutiny. On September 13, 2024, the Clerk of this Court entered an order on APT’s first motion to exceed the confidential word limit in its opening brief. This Court ordered:

The Court deems it the better course at this stage of the proceedings to grant leave to redact the 137

unique words requested by APT. Such leave is granted *without prejudice* to the merits panel assigned to this case ordering disclosure if deemed appropriate. . . . The ultimate determination of whether the information should remain redacted is left to the merits panel.

September 13, 2024 Order at 2 (emphasis added).

According to APT, all of the words marked confidential in its reply brief were also marked confidential in its opening brief. *See* Motion at 1. Accordingly, the result that was applied to APT's first motion to exceed the confidential word limit should also be applied to its current Motion.

DATED this 14th day of November, 2024.

SPENCER FANE LLP

/s/ Keith A. Call

Keith A. Call

Rodney Parker

Andrew L. Roth

Attorneys for Defendants

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT****CERTIFICATE OF SERVICE****Case Number** 2024-1751**Short Case Caption** Applied Predictive Technologies, Inc. v. MarketDial, Inc.

NOTE: Proof of service is only required when the rules specify that service must be accomplished outside the court's electronic filing system. See Fed. R. App. P. 25(d); Fed. Cir. R. 25(e). Attach additional pages as needed.

I certify that I served a copy of the foregoing filing on 11/14/2024by ☐ U.S. Mail ☐ Hand Delivery ☒ Email ☐ Facsimile
☐ Other: _____

on the below individuals at the following locations.

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☐ Additional pages attached.Date: 11/14/2024Signature: /s/ Keith A. CallName: Keith A. Call